IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1550 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FULCHAND SHANKAR

Versus

BAI SHIVI, WD/O JENA PUPA

Appearance:

MR PK JANI for Petitioner

MR DD VYAS for Respondent No. 1, 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rent Act at the instance of the original defendant - tenant, who was sued by the landlords - plaintiffs for a decree of eviction on three grounds.

1.1 The plaintiffs - landlords prayed for a decree of eviction against the defendant - tenant, firstly on the ground that the tenant was in arrears of rent of more than six months and was not ready and willing to pay the rent, that the tenant had acquired other suitable residential accommodation, and that the landlords reasonably and bonafide required the suit premises for their own use and occupation.

2. The trial Court, considering the pleadings of the parties and totality of the evidence on record, found against the landlords all the three grounds, and consequently dismissed the suit.

3. The landlords being aggrieved by the dismissal of their suit, preferred an appeal before the lower appellate Court. The lower appellate Court, on a total re-appreciation of the entire evidentiary material on record, reversed the findings of the trial Court on two grounds. The lower appellate Court found that the tenant had acquired suitable residential accommodation within the meaning of section 13[1][l] of the Rent Act, and also found that the landlords reasonably and bonafide required the suit premises for their own use and occupation, and further that greater hardship would be caused to the landlords by refusing the decree than the hardship caused to the tenant by passing the decree. The lower appellate Court therefore decreed the suit of the landlords on these two grounds.

4. Hence, the present revision at the instance of the tenant.

5. From the evidence on record, it is obvious, and beyond controversy, that the rented premises consist of only one room, and the entire family of the tenant resides in that one room. As against this, the premises which the tenant obtained from the Housing Board consisted of one living room, kitchen, bathroom and lavatory. Obviously, these new premises which the tenant had acquired are not only very extensive in area, but also contain many facilities for a comfortable living, which were not available in the rented premises. It could therefore not be reasonably argued that the newly acquired premises were "not suitable".

5.1 From the evidence on record, which again is not disputable, the following facts emerge.

The tenant was allotted premises by the Gujarat Housing Board, and this allotment became final conferring

legal possession upon the tenant on 19th December 1971. The tenant was in possession of these premises at least since the said date. However, the tenant admittedly transferred possession in favour of a third party by the name of Maniben sometime in the year 1975. Since this transfer was unauthorized, the tenant was required to surrender his possession, as also his possessory title to the Housing Board, which he did.

6. In the context of these facts, it was sought to be urged that, in order to justify a decree for eviction u/s 13[1][l] of the Rent Act, the landlord must not only have a cause of action on the date of the suit, but must also have a surviving cause of action on the date of the decree. This submission was sought to be made on the basis of a decision of this High Court in the case of Shivlal Nathuram Vaishnav v/s Harshadbhai Haribhai Oza reported in 21 GLR page 99. This decision does not directly assist learned counsel for the tenant in any manner for the simple reason that the ratio laid down therein is that the cause of action u/s 13[1][l] available to the landlord must exist both at the time of notice and at the time of filing of the suit. The decision further lays down that where a tenant has once acquired other premises, but during the pendency of the suit, gives away such premises, he would not be entitled to any protection u/s 13[1][l] of the Rent Act.

6.1 However, it was sought to be urged that, on the facts of the case, the tenant had in fact parted with possession of his own premises in favour of Maniben in the year 1975, whereas the suit was instituted on 26th June 1976. In other words, it was sought to be contended that, on the date of the suit, the landlords had no cause of action u/s 13[1][l] since the tenant was not in possession of his other premises. This submission is based on a limited reading of the facts as they appear from the record. The record of the case discloses, and this is not disputable, that this very plaintiff had filed an earlier suit against this very defendant, based upon their relationship of landlord and tenant, and that this earlier suit was filed on 20th September 1974, being H.R.P. Suit No.4296/74. Since this earlier suit was, in the mind of the landlord, likely to suffer from a technical defect, the landlord withdrew the suit with a specific liberty to file another suit on the same cause of action. Such liberty was in fact reserved to the landlord by an order of the Court passed in the said suit. It also requires to be noted that the said earlier suit was filed on the ground of section 13[1][l] of the Rent Act. When seen in this context, the present suit of

the landlord may have been filed in the year 1976, but the cause of action has accrued to the landlords as asserted in the earlier suit filed on 20th of September 1974. When seen in this context, it is found that the tenant had transferred possession of his other premises in favour of the said Maniben in 1975, and thus, such transfer was effected during the time when the landlord had already asserted his cause of action under this particular statute.

7. Thus, on the facts and circumstances of the case, this submission of learned counsel for the petitioner cannot be accepted.

8. So far as the finding of the lower appellate Court to the effect that the landlords reasonably and bonafide required the suit premises for their own use and occupation is concerned, and the further finding that refusing to pass a decree for eviction would cause greater hardship to the landlords than the hardship caused to the tenant by passing of a decree, learned counsel for the petitioner could not effectively or even seriously challenge the line of reasoning adopted by the lower appellate Court and the conclusions arrived at by it. I am therefore not inclined to discuss this issue in greater detail.

9. I therefore find that there is no substance in the present revision application, and the same therefore requires to be rejected. It is accordingly rejected. Rule discharged with no orders as to costs. Interim relief stands vacated.

10. At this stage, learned counsel for the petitioner - tenant seeks time to vacate the premises. On the facts and circumstances of the case, the petitioner - tenant is granted time to vacate the premises upto 5th February 2001, subject to the tenant filing the usual undertaking in this Court, latest by 18th of August 2000. It is clarified that if the said undertaking is not filed by due date, the decree of the lower appellate Court shall be executable forthwith, without any further orders in this regard.

*****

parmar*